

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**September 4, 2002**

**IN RE:**

**APPLICATION OF COMM SOUTH  
COMPANIES, INC. FOR A CERTIFICATE  
TO PROVIDE COMPETING FACILITIES-  
BASED LOCAL TELECOMMUNICATIONS  
SERVICES**

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**DOCKET NO. 02-00665**

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**INITIAL ORDER GRANTING CERTIFICATE OF  
PUBLIC CONVENIENCE AND NECESSITY**

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On August 6, 2002, this matter came before the Hearing Officer of the Tennessee Regulatory Authority ("Authority") upon Comm South Companies, Inc.'s *Application to Provide Competing Facilities-Based Local Exchange Services* ("Application") filed on June 3, 2002. The Application was made pursuant to Tenn. Code Ann. § 65-4-201 *et seq.*

**LEGAL STANDARD FOR GRANTING CCN**

The Application of Comm South Companies, Inc. ("Comm South") was considered in light of the criteria for granting a certificate of public convenience and necessity ("CCN") as set forth in applicable statutes. Tenn. Code Ann. § 65-4-201 provides, in part:

(a) No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or

the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

\* \* \*

(c) After notice to the incumbent local exchange telephone company and other interested parties and following a hearing, the authority shall grant a certificate of convenience and necessity to a competing telecommunications service provider if after examining the evidence presented, the authority finds:

(1) The applicant has demonstrated that it will adhere to all applicable commission policies, rules and orders; and

(2) The applicant possesses sufficient managerial, financial, and technical abilities to provide the applied for services.

\* \* \*

(d) Subsection (c) is not applicable to areas served by an incumbent local exchange telephone company with fewer than 100,000 total access lines in this state unless such company voluntarily enters into an interconnection agreement with a competing telecommunications service provider or unless such incumbent local exchange telephone company applies for a certificate to provide telecommunications services in an area outside its service area existing on June 6, 1995.<sup>1</sup>

Furthermore, pursuant to Tenn. Code Ann. § 65-5-212, a competing telecommunications provider is required to file with the Authority (1) a plan containing the provider's plan for purchasing goods and services from small and minority-owned telecommunications businesses; and (2) information on programs that might provide technical assistance to such businesses.

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<sup>1</sup> Notwithstanding the existence of subsection (d), the Federal Communications Commission ("FCC") has expressly preempted the Authority's enforcement of subsection (d) pursuant to the authority granted to the FCC under 47 U.S.C. § 253(d). *See In Re: AVR, L.P. d/b/a Hyperion of Tennessee, L.P. Petition for Preemption of Tennessee Code Annotated Section 65-4-201(d) and Tennessee Regulatory Authority Decision Denying Hyperion's Application Requesting Authority to Provide Service in Tennessee Rural LEC Service Area*, FCC 99-100, FCC Memorandum Opinion and Order (May 27, 1999); FCC Memorandum Opinion and Order (January 8, 2001).

The Authority has since issued an order expanding a competing local exchange carrier's CCN to provide telecommunications services on a statewide basis including areas served by incumbent local exchange carriers with fewer than 100,000 total access lines in Tennessee. *See Order Approving Application of Level 3 Communications, L.L.C. to Amend Its Certificate of Public Convenience and Necessity*, Authority Docket No. 02-00230 (June 28, 2002).

## INTERVENORS

Public notice of the Hearing in this matter was issued by the Hearing Officer on July 25, 2002, pursuant to Tenn. Code Ann. § 65-4-204. No interested persons sought intervention prior to or during the Hearing.

## COMM SOUTH COMPANIES, INC.'S HEARING

Comm South's Application was uncontested. At the Hearing held on August 6, 2002, Comm South was not represented by legal counsel. Mr. Rick Brown, Chief Technology Officer of Comm South, participated in the Hearing telephonically, presented testimony, and was subject to examination by the Hearing Officer. Upon Comm South's conclusion of proof in its case, the Hearing Officer granted Comm South's Application based upon the following findings of fact and conclusions of law:

### **I. APPLICANT'S QUALIFICATIONS**

1. Comm South is a corporation organized under the laws of Texas on March 17, 1995, and was qualified to transact business in Tennessee on July 3, 1997.
2. The complete street address of Comm South's principal place of business is 6830 Walling Lane, Dallas, TX 75231. The phone number is (214) 355-7000 and fax number is (214) 355-7259.
3. The Application and supporting documentary information existing in the record indicate that Comm South has the requisite technical and managerial ability to provide facilities-based local exchange telecommunications services within the State of Tennessee. Specifically, Comm South's senior management team possesses extensive business, technical, operational and regulatory telecommunications experience.

4. Comm South has the necessary capital and financial ability to provide the services it proposes to offer.

5. Comm South has represented that it will adhere to all applicable policies, rules and orders of the Authority.

## **II. PROPOSED SERVICES**

Comm South intends to offer competing facilities-based local exchange telecommunications services to its customers throughout the State of Tennessee.

## **III. PERMITTING COMPETITION TO SERVE THE PUBLIC CONVENIENCE AND NECESSITY**

Upon a review of the Application and the record in this matter, the Hearing Officer finds that approval of Comm South's Application would inure to the benefit of the present and future public convenience by permitting competition in the telecommunications services markets in the State and by fostering the development of an efficient technologically advanced statewide system of telecommunications services.

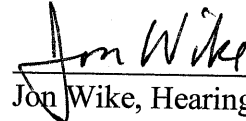
## **IV. SMALL AND MINORITY-OWNED TELECOMMUNICATIONS BUSINESS PARTICIPATION PLAN & BUSINESS ASSISTANCE PROGRAM**

1. Comm South has filed a satisfactory small and minority-owned telecommunications business participation plan, pursuant to Tenn. Code Ann. § 65-5-212 and the Authority's Rules.

2. Comm South has acknowledged its obligation to contribute to the funding of the small and minority-owned telecommunications business assistance program, as set forth in Tenn. Code Ann. § 65-5-213.

**IT IS THEREFORE ORDERED THAT:**

1. The Application of Comm South Companies, Inc. is approved; and
2. Any party aggrieved by the Hearing Officer's decision in this matter may file a Petition for Reconsideration within fifteen (15) days from and after the date of this Order.

  
Jon Wike, Hearing Officer